IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

CRIMINAL APPLICATION NO.4074 OF 2006

Prakash Jaganath Chavan .. ..Applicant

Versus

The State of Maharashtra .. ..Respondent

Mr.S.B.Shetye for applicant

Mr.Rajesh More, APP for State

CORAM : S.C.DHARMADHIKARI,J.

DATE : 29TH NOVEMBER, 2006

P.C.:

1. The applicant is arrested in connection with C.R.No.I-77 of 2006 registered by Vadner Khakurdi Police Station alleging offences punishable under Section 376(2)(b)(c) of Indian Penal Code.

2. The applicant has been arrested on 13th September, 2006. He has been remanded to Magisterial custody on 16th September, 2006. He applied for bail after the charge-sheet was filed and the said application has been

rejected by the Ad-hoc Addl. Sessions Judge-2, Malegaon, Dist. Nasik.

3. Shri Shetye for the applicant submits that there is an apparent inconsistency and contradiction in the version of the complainant/prosecutrix. He submits that it is inconceivable that the prosecutrix left her residence and accompanied the applicant in the early morning hours, without her parents knowledge. The Applicant is her Basket Ball Coach and she is accompanying him for coaching voluntarily. On the other hand, it is clear that the complaint has been filed to some how or the other implicate the applicant. The applicant has some differences with the management of the School where he is employed and the dispute and grievances are with regard to the service conditions. Further, Rawalgaon Sugar Factory has a Union of Employees and the applicant's father is the President of the same. In such circumstances, out of enimity applicant has been falsely implicated. That apart, the version of the alleged eye witness has not been corroborated by the medical evidence. The medical evidence records the conclusion that there is no evidence of rape. In such circumstances, the applicant deserves to be enlarged on bail. The applicant would abide by such

conditions as are imposed by this Court.

4. The learned APP on the other hand states that at this stage, the version of the prosecutrix does not require any corroboration. This is not a stage where the matter can be gone into details. When the prosecutrix who is a school going child has clearly implicated her Basketball Coach and the incident having been seen by two independent witnesses, merely because the medical evidence is inconclusive, the applicant should not be enlarged on bail. The applicant might try and pressurise the prosecutrix and other witnesses.

5. This is a case where the applicant has been implicated in an alleged rape. The applicant is the Basketball Coach. The girl alleges that prior to the incident in question also the applicant has raped her. However, these details are not at all placed on record. Prima facie, the Act may not be covered by Ss.375 and 376 (2) (b) (c) of I.P.C. Even at this stage, the medical evidence cannot be totally brushed aside. Although the prosecutrix states that she has told about the incident to her parents, their statements are not placed before me. Prima facie, it appears that the applicant used to pick up

the girl/prosecutrix from the residence for Basketball Coaching and that is how she accompanied him on the relevant date. Mr. Shetye's submission with regard to the on going dispute with the management also cannot be completely ignored. The school in which the applicant is employed is controlled by the local Sugar Factory. Therefore, the dispute and differences with the management of the Sugar Factory and the Educational Institutions being the cause of the complaint cannot be ruled out. In such circumstances and when applicant is ready and willing to abide by all conditions imposed, he deserves to be enlarged on bail. Hence, the following order :

O R D E R :

(i) The applicant arrested in connection with C.R.No.I-77 of 2006 registered with Vedner Khakurdi Police Station shall be enlarged in the sum of Rs.15,000/= each with one or two local sureties in the like amount.

(ii) The applicant shall stay away from Rawalgaon, Tal. Malegaon, Dist. Nasik and should not enter Rawalgaon till the conclusion of the

trial. However, it would be open for the applicant to apply for modification of this condition in case his suspension is revoked and permission is granted to resume duties.

(iii) The applicants would report to Vedner Khakurdi Police Station once in a week till the conclusion of the trial.

(iv) The order of bail will be given effect only after the Applicant furnishes to the investigating officer the details about his place of residence and addresses where he proposes to stay after he is enlarged on bail. The applicant will not change his residential address thereafter till the conclusion of the trial without prior intimation to the investigating officer.

(v) The bail is granted subject to condition that the applicant shall not directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with the prosecution evidence.

(vi) The applicant shall cooperate with the learned Trial Judge for expeditious disposal of the case. Any attempt by the applicant to delay the trail may be a ground for cancellation of bail.

(vii) Any observation made in this order shall not be construed as any finding or any expression of opinion of the merits of the case at the time of trial.

(viii) Application is disposed of in above terms.

(ix) Parties to act on an authenticated copy of this order.

(S.C.Dharmadhikari, J.)